

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RICHARD TUBBY,

Plaintiff,

v.

OFFICER DAVID ALLEN,

Defendant.

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Case No. 6:16-CV-972-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Richard Tubby, a former prisoner previously confined in the Texas prison system, through counsel, filed the above-styled and numbered civil rights lawsuit. Plaintiff moved for the entry of a default judgment against Defendant. Defendant did not respond.

The Complaint was referred to United States Magistrate Judge K. Nicole Mitchell, who held a hearing on August 21, 2019, on Plaintiff's motion to enter default judgment, including Plaintiff's request for damages, attorneys' fees, and taxable costs. Docket No. 98. Judge Mitchell issued a Report and Recommendation, concluding that a default judgment should be entered against Defendant Allen, and judgment should be awarded to Plaintiff against Defendant. Docket No. 100. Judge Mitchell also recommended that Plaintiff should be awarded compensatory damages in the amount of \$300,000 and punitive damages in the amount of \$350,000 against Defendant. Docket No. 100 at 9–15. Judge Mitchell further recommended that Plaintiff should be awarded attorneys' fees in the amount of \$26,957.50 and nontaxable expenses in the amount of \$584.50, for a total of \$27,542.00. *Id.* at 15–22, 24–26. She finally recommended that Plaintiff be awarded taxable costs against Defendant in the amount of \$478.39. *Id.* at 23–24.

This Court reviews the findings and conclusions of the Magistrate Judge *de novo* only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a *de novo* review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Defendant did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations, has been presented for consideration, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts same as the findings and conclusions of the Court. It is accordingly

ORDERED that the Report and Recommendation of the Magistrate Judge (Docket No. 100) is **ADOPTED** as the findings and conclusions of the Court. It is further


ORDERED that **DEFAULT JUDGMENT** is hereby **RENDERED** in favor of Plaintiff Richard Tubby and against Defendant David Allen in the amount of \$300,000 for compensatory damages and \$350,000 for punitive damages. It is further

ORDERED that Plaintiff Richard Tubby is **AWARDED** attorneys’ fees in the amount of \$26,957.50 and nontaxable expenses in the amount of \$584.50, for a total of \$27,542.00 against Defendant David Allen. It is further

ORDERED that Plaintiff Richard Tubby is **AWARDED** taxable costs in the amount of \$478.39 against Defendant David Allen. It is further

ORDERED that Defendant David Allen shall **PAY** post-judgment interest, to be calculated and compounded pursuant to 28 U.S.C. § 1961, until paid in full. All motions not previously ruled on are **DENIED**.

So **ORDERED** and **SIGNED** this **19th** day of **September, 2019**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE